

REMARKS

Applicants respectfully request further examination and reconsideration in view of the instant response. The claims remaining in the present application are Claims 1, 4-10 and 13-26. Claims 1, 2, 4-11 and 13-26 are rejected. Claims 2 and 13 are cancelled herein without prejudice. Claims 1, 11 and 20 are amended herein. No new matter has been added. Support for the amendments can be found in the instant specification at least at page 8, lines 15-22, and page 15, line 30, through page 16, line 11.

Decision on Appeal

Applicants note that a Decision on Appeal was mailed August 28, 2009, in which the Examiner's rejection of Claims 1, 2, 4-11 and 13-26 was affirmed. The instant Amendment and Response includes claim amendments made in light of a detailed review of the Decision on Appeal.

35 U.S.C. §103(a) Rejection - Claims 1, 2, 4-6, 9, 11, 13-15 and 18

The Office Action mailed March 6, 2007, hereinafter referred to as the "instant Office Action," states that Claims 1, 2, 4-6, 9, 11, 13-15 and 18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent 6,366,888 by Kroon et al., hereinafter referred to as "Kroon", in view of "Multiple Description Coding Using Pairwise Correlating Transforms" by Wang et al., hereinafter referred to as "Wang", further in view of United States Patent Application Publication 2002/0040479 by Ehrman et al., hereinafter referred to as "Ehrman". Claims 2 and 13 are cancelled herein without prejudice. Therefore, a discussion of the rejection of Claims 2 and 13 is moot at this time. The Applicants have reviewed the Kroon, Wang and Ehrman and respectfully

submit that the embodiments as recited in Claims 1, 4-6, 9, 11, 14, 15 and 18 are patentable over Kroon, Wang and Ehrman, alone or in combination, for at least the following rationale.

“As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries” including “[a]scertaining the differences between the claimed invention and the prior art” (MPEP 2141(II)). “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious” (emphasis in original; MPEP 2141.02(I)). Applicants note that “[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art” (emphasis added; MPEP 2141(III)).

Moreover, Applicants respectfully note that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention” (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)).

Applicants respectfully submit that Kroon, Wang and Ehrman, alone or in combination, do not teach or suggest the claimed embodiments in the manner set forth in independent Claims 1 and 11. Independent Claim 1 recites that an embodiment of the present invention is directed to (emphasis added):

A method for streaming media data to a client, said method comprising:

encoding an item of content comprising media data to be streamed to said client into a first multiple description bitstream and into a second multiple description bitstream, wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream; and

distributing concurrently said first and second multiple description bitstreams to a plurality of servers placed at intermediate nodes throughout a network, such that said first and second multiple description bitstreams are sent to said client via a plurality of transmission paths, wherein said client decodes said item of content at a first quality should only said first multiple description bitstream be received at said client, wherein said client decodes said item of content at a second quality should only said second multiple description bitstream be received at said client, and wherein said client decodes said item of content at a quality greater than either of said first or second quality should both said first and said second multiple description bitstreams be received at said client.

Independent Claim 11 includes similar recitations. Claims 4-6 and 9 that depend from independent Claim 1 and Claims 14, 15 and 18 that depend from independent Claim 11 also include these recitations.

First, Applicants respectfully submit that Kroon teaches away from “encoding an item of content comprising media data to be streamed to said client into a first multiple description bitstream and into a second multiple

description bitstream, wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added) as recited in independent Claim 1, and the similar embodiment of independent Claim 11.

Applicants respectfully agree with the statement in the instant Office Action that “Kroon does not specifically teach that the multiple description bitstreams are decodable independent of one another; and that client decodes said item of content at a first quality should only said first multiple description bitstream be received at said client, wherein said client decodes said item of content at a second quality should only said second multiple description bitstream be received at said client” (instant Office Action; last two lines of page 2 through line 4 of page 3). However, for the reasons presented below, Applicants respectfully submit that Kroon teaches away from the claimed embodiment.

As understood by Applicants, Kroon describes a C-representation that provides a first (minimum) quality and E-representations that contain enhancement information. Importantly, according to Kroon, the E-representations appear to require the C-representation. In particular, Kroon recites that

[o]ne of the subrate representations represents core audio information contained in the musical piece, and is referred to as a “C-representation.” The other two subrate representations represent first and second enhancement audio information contained in the musical piece, and are referred to as “E₁ representation” and “E₂-representation,” respectively. Because of the design of the multi-rate coding in accordance with the invention, the audio signals recovered based on the C-representation alone, although viable, afford the minimum acceptable quality version of a musical piece; the audio signals recovered based on the C-representation in combination with either E₁-representation or E₂-representation afford a relatively high quality version of the musical piece; the audio signals recovered based on the C-representation in combination with both E₁-representation and E₂-representation afford the highest quality version of the musical piece. However, any audio signals recovered based only on the E₁-representation and/or E₂-representations are not viable. (emphasis added; col. 3, line 65, through col. 4, line 16)

Applicants understand Kroon to specifically recite that only the C-representation is independently decodable. Moreover, Applicants respectfully submit that by disclosing that only the C-representation is independently decodable, and that the enhancement information is not independently viable, Kroon teaches away from the claimed embodiment.

In particular, Applicants note that the Decision on Appeal mailed August 28, 2009, recites that “Kroon does require the C-representation to recover an audio signal with minimally-acceptable quality (28.8 kbps). FF 3-4. And we recognize that recovering audio signals based solely on one or both E-representations is not viable. FF 5. Put another way, audio signals with E-representations require the C-representation, but not vice-versa. See FF 4-5” (emphasis added; Decision on Appeal; page 9, lines 17-21). Moreover, as illustrated in Table 2 of the Decision on Appeal “Kroon contemplates four

different bitstreams” (page 10), wherein each bitstream includes at least the C-representation.

In contrast, the claimed embodiment recites “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added).

Applicants respectfully submit that by disclosing that each bitstream includes the C-representation, Kroon teaches away from “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative” (emphasis added) as claimed. Moreover, Applicants respectfully submit that by disclosing that the C-representation is required to decode a bitstream, Kroon teaches away from “said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added) as claimed.

Second, Applicants respectfully submit that Wang does not overcome the deficiencies of Kroon because Kroon teaches away from such a

modification and combination with Wang. As presented above, Applicants respectfully agree with the statement in the instant Office Action that “Kroon does not specifically teach that the multiple description bitstreams are decodable independent of one another; and that client decodes said item of content at a first quality should only said first multiple description bitstream be received at said client, wherein said client decodes said item of content at a second quality should only said second multiple description bitstream be received at said client” (instant Office Action; last two lines of page 2 through line 4 of page 3). Applicants respectfully note that Wang is relied on to overcome this shortcoming.

Applicants respectfully submit that “[i]t is improper to combine references where the references teach away from their combination” (emphasis added; MPEP 2145(X)(D)(2); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)).

Applicants note that the instant Office Action asserts that “Wang teaches decoding at a first quality should only first MDC be received at said client, decoding at a second quality should only second MDC be received at said client, and decoding at a higher quality than the first and second qualities should both MDCs be received at the client (abstract, column 1)” (page 3; lines 4-7). However, as presented above, Applicants respectfully submit that Kroon teaches away from “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without

utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added) as claimed.

Third, Applicants respectfully submit that Ehrman does not overcome the shortcomings of Kroon and Wang. More specifically, Applicants respectfully submit that Ehrman, alone or in combination with Kroon and Wang, does not show or suggest the limitations of independent Claims 1 and 11 cited above. Therefore, Applicants respectfully submit that Ehrman, alone or in combination with Kroon and Wang, does not show or suggest “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added) as claimed.

In view of the combination of Kroon, Wang and Ehrman not satisfying the requirements of a *prima facie* case of obviousness, Applicants respectfully submit that independent Claims 1 and 11 overcome the rejection under 35 U.S.C. § 103(a), and that these claims are thus in a condition for allowance. Therefore, Applicants respectfully submit that the combination of Kroon, Wang and Ehrman also does not teach or suggest the additional claimed features of the present invention as recited in Claims 4-6 and 9 that depend from

independent Claim 1 and Claims 14, 15 and 18 that depend from independent Claim 11. Applicants respectfully submit that Claims 4-6, 9, 14, 15 and 18 also overcome the rejection under 35 U.S.C. § 103(a) as these claims are dependent on allowable base claims.

35 U.S.C. §103(a) Rejection - Claims 7, 8, 10, 16, 17 and 19

The instant Office Action states that Claims 7, 8, 10, 16, 17 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kroon in view of Wang, further in view of Ehrman, yet further in view of United States Patent 6,401,085 by Gershman et al., hereinafter referred to as “Gershman”. The Applicants have reviewed the Kroon, Wang, Ehrman and Gershman and respectfully submit that the embodiments as recited in Claims 7, 8, 10, 16, 17 and 19 are patentable over Kroon, Wang, Ehrman and Gershman, alone or in combination, for at least the following rationale.

Claims 7, 8 and 10 are dependent on independent Claim 1 and Claims 16, 17 and 19 are dependent on independent Claim 11, and include the recitations of independent Claims 1 and 11, respectively. Hence, by demonstrating that independent Claims 1 and 11 are patentable over Kroon, Wang, Ehrman and Gershman, it is also demonstrated that Kroon, Wang, Ehrman and Gershman do not show or suggest the embodiments of Claims 7, 8, 10, 16, 17 and 19.

As presented above, Applicants respectfully submit that that Kroon, Wang and Ehrman, alone or in combination, do not show or suggest the “wherein said first multiple description bitstream and said second multiple

description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added) as recited in independent Claim 1, and the similar embodiment of independent Claim 11.

Moreover, Applicants respectfully submit that Gershman does not overcome the shortcomings of Kroon, Wang and Ehrman. More specifically, Applicants respectfully submit that Gershman, alone or in combination with Kroon, Wang and Ehrman, does not show or suggest the limitations of independent Claims 1 and 11 cited above. Therefore, Applicants respectfully submit that Gershman, alone or in combination with Kroon, Wang and Ehrman, does not show or suggest “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added) as claimed.

In view of the combination of Kroon, Wang, Ehrman and Gershman not satisfying the requirements of a *prima facie* case of obviousness, Applicants

respectfully submit that independent Claims 1 and 11 overcome the rejection under 35 U.S.C. § 103(a), and that these claims are thus in a condition for allowance. Therefore, Applicants respectfully submit that the combination of Kroon, Wang, Ehrman and Gershman also does not teach or suggest the additional claimed features of the present invention as recited in Claims 7, 8 and 10 that depend from independent Claim 1 and Claims 16, 17 and 19 that depend from independent Claim 11. Applicants respectfully submit that Claims 7, 8, 10, 16, 17 and 19 also overcome the rejection under 35 U.S.C. § 103(a) as these claims are dependent on allowable base claims.

35 U.S.C. §103(a) Rejection - Claims 20-22

Claims 20-22 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Kroon in view of Wang, further in view of Ehrman, yet further in view of United States Patent 6,308,222 by Krueger, hereinafter referred to as “Krueger”. The Applicants have reviewed the Kroon, Wang, Ehrman and Krueger and respectfully submit that the embodiments as recited in Claims 20-22 are patentable over Kroon, Wang, Ehrman and Krueger, alone or in combination, for at least the following rationale.

Independent Claim 20 recites, in part, “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is

decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added).

First, Applicants respectfully submit that Kroon teaches away from “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added) as recited in independent Claim 20.

As presented above, Applicants understand Kroon to describe a C-representation that provides a first (minimum) quality and E-representations that contain enhancement information. Importantly, according to Kroon, the E-representations appear to require the C-representation. In particular, Kroon recites that

[o]ne of the subrate representations represents core audio information contained in the musical piece, and is referred to as a “C-representation.” The other two subrate representations represent first and second enhancement audio information contained in the musical piece, and are referred to as “E₁ representation” and “E₂-representation,” respectively. Because of the design of the multi-rate coding in accordance with the invention, the audio signals recovered based on the C-representation alone, although viable, afford the minimum acceptable quality version of a musical piece; the audio signals recovered based on the C-representation in combination with either E₁-representation or E₂-representation afford a relatively high quality version of the musical piece; the audio signals recovered based on the C-representation in combination with both E₁-representation and E₂-representation afford the highest

quality version of the musical piece. However, any audio signals recovered based only on the E₁-representation and/or E₂-representations are not viable. (emphasis added; col. 3, line 65, through col. 4, line 16)

Applicants understand Kroon to specifically recite that only the C-representation is independently decodable. Moreover, Applicants respectfully submit that by disclosing that only the C-representation is independently decodable, and that the enhancement information is not independently viable, Kroon teaches away from the claimed embodiment.

In particular, Applicants note that the Decision on Appeal mailed August 28, 2009, recites that “Kroon does require the C-representation to recover an audio signal with minimally-acceptable quality (28.8 kbps). FF 3-4. And we recognize that recovering audio signals based solely on one or both E-representations is not viable. FF 5. Put another way, audio signals with E-representations require the C-representation, but not vice-versa. See FF 4-5” (emphasis added; Decision on Appeal; page 9, lines 17-21). Moreover, as illustrated in Table 2 of the Decision on Appeal “Kroon contemplates four different bitstreams” (page 10), wherein each bitstream includes at least the C-representation.

In contrast, the claimed embodiment recites “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second

multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added).

Applicants respectfully submit that by disclosing that each bitstream includes the C-representation, Kroon teaches away from “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative” (emphasis added) as claimed. Moreover, Applicants respectfully submit that by disclosing that the C-representation is required to decode a bitstream, Kroon teaches away from “said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added) as claimed.

Second, Applicants respectfully submit that Wang does not overcome the deficiencies of Kroon because Kroon teaches away from such a modification and combination with Wang. Applicants respectfully submit that “[i]t is improper to combine references where the references teach away from their combination” (emphasis added; MPEP 2145(X)(D)(2); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)).

Applicants note that the instant Office Action asserts that “Wang teaches decoding at a first quality should only first MDC be received at said client, decoding at a second quality should only second MDC be received at said

client, and decoding at a higher quality than the first and second qualities should both MDCs be received at the client (abstract, column 1)” (page 3; lines 4-7). However, as presented above, Applicants respectfully submit that Kroon teaches away from “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added) as claimed.

Third, Applicants respectfully submit that Ehrman does not overcome the shortcomings of Kroon and Wang. More specifically, Applicants respectfully submit that Ehrman, alone or in combination with Kroon and Wang, does not show or suggest the limitations of independent Claim 20 cited above. Therefore, Applicants respectfully submit that Ehrman, alone or in combination with Kroon and Wang, does not show or suggest “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added) as claimed.

Fourth, Applicants respectfully submit that Krueger does not overcome the shortcomings of Kroon, Wang and Ehrman. More specifically, Applicants respectfully submit that Krueger, alone or in combination with Kroon, Wang and Ehrman, does not show or suggest the limitations of independent Claim 20 cited above. Therefore, Applicants respectfully submit that Krueger, alone or in combination with Kroon, Wang and Ehrman, does not show or suggest “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added) as claimed.

In view of the combination of Kroon, Wang, Ehrman and Krueger not satisfying the requirements of a *prima facie* case of obviousness, Applicants respectfully submit that independent Claim 20 overcomes the rejection under 35 U.S.C. § 103(a), and that this claim is thus in a condition for allowance. Therefore, Applicants respectfully submit that the combination of Kroon, Wang, Ehrman and Krueger also does not teach or suggest the additional claimed features of the present invention as recited in Claims 21 and 22 that depend from independent Claim 20. Applicants respectfully submit that Claims 21 and 22 also overcome the rejection under 35 U.S.C. § 103(a) as these claims are dependent on allowable base claims.

35 U.S.C. §103(a) Rejection - Claims 23-26

The instant Office Action states that Claims 23-26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kroon in view of Wang, further in view of Ehrman, yet further in view of Krueger, still yet further in view of United States Patent 6,401,085 by Gershman et al., hereinafter referred to as “Gershman”. The Applicants have reviewed the Kroon, Wang, Ehrman, Krueger and Gershman and respectfully submit that the embodiments as recited in Claims 23-26 are patentable over Kroon, Wang, Ehrman, Krueger and Gershman, alone or in combination, for at least the following rationale.

Claims 23-26 are dependent on independent Claim 20 and include the recitations of independent Claim 20. Hence, by demonstrating that independent Claim 20 is patentable over Kroon, Wang, Ehrman, Krueger and Gershman, it is also demonstrated that Kroon, Wang, Ehrman, Krueger and Gershman do not show or suggest the embodiments of Claims 23-26.

As presented above, Applicants respectfully submit that that Kroon, Wang, Krueger and Ehrman, alone or in combination, do not show or suggest the “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added) as recited in independent Claim 20.

Moreover, Applicants respectfully submit that Gershman does not overcome the shortcomings of Kroon, Wang, Ehrman and Krueger. More specifically, Applicants respectfully submit that Gershman, alone or in combination with Kroon, Wang, Ehrman and Krueger, does not show or suggest the limitations of independent Claim 20 cited above. Therefore, Applicants respectfully submit that Gershman, alone or in combination with Kroon, Wang, Ehrman and Krueger, does not show or suggest “wherein said first multiple description bitstream and said second multiple description bitstream each consist of complimentary information that is not duplicative and are decodable independent of one another such that said first multiple description bitstream is decodable without utilizing any information comprised within said second multiple description bitstream and said second multiple description bitstream is decodable without utilizing any information comprised within said first multiple description bitstream” (emphasis added) as claimed.

In view of the combination of Kroon, Wang, Ehrman, Krueger and Gershman not satisfying the requirements of a *prima facie* case of obviousness, Applicants respectfully submit that independent Claim 20 overcomes the rejection under 35 U.S.C. § 103(a), and that this claim is thus in a condition for allowance. Therefore, Applicants respectfully submit that the combination of Kroon, Wang, Ehrman, Krueger and Gershman also does not teach or suggest the additional claimed features of the present invention as recited in Claims 23-26 that depend from independent Claim 20. Applicants respectfully submit that Claims 23-26 also overcome the rejection under 35 U.S.C. § 103(a) as these claims are dependent on allowable base claims.

CONCLUSION

In light of the above remarks, Applicants respectfully request reconsideration of the rejected claims.

Based on the arguments presented above, Applicants respectfully assert that Claims 1, 4-11 and 14-26 overcome the rejections of record and, therefore, Applicants respectfully solicit allowance of these claims.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

WAGNER BLECHER LLP

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/John P. Wagner, Jr./

John P. Wagner, Jr.
Reg. No. 35,398

123 Westridge Drive
Watsonville, CA 95076 USA
(408) 377-0500